Supreme Court, U.S.
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No. 91-577

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

BONITA PASCHAL, DANIEL DODSON, PAUL BUCASAS and all others similarly situated,

Petitioners,

v.

LOLETA DIDRICKSON, the Director of the Illinois Department of Employment Security; STELLA CUTHBERT, the Commissioner of the Illinois Department of Employment Security; LYNN MARTIN, the Secretary of the United States Department of Labor; ROBERTS T. JONES, the Assistant Secretary for the Employment and Training Division of the United States Department of Labor; and the UNITED STATES DEPARTMENT OF LABOR,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY BRIEF FOR PETITIONERS

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1991

Bonita Paschal, Daniel Dodson, Paul Bucasas and all others similarly situated,

Petitioners,

v.

Loleta Didrickson, the Director of the Illinois Department of Employment Security; **Stella Cuthbert**, the Commissioner of the Illinois Department of Employment Security; **Lynn Martin**, the Secretary of the United States Department of Labor; **Roberts T. Jones**, the Assistant Secretary for the Employment and Training Division of the United States Department of Labor; and **the United States Department of Labor**,

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REPLY BRIEF FOR PETITIONERS

ARGUMENT

In our Petition for Writ of Certiorari ("Pet."), we asked this Court to hear three questions. Pet. at i. We argued, among other things, that review was justified because the ruling below presented this Court with an opportunity to resolve two separate conflicts among the courts of appeal and because it decided an important question of constitutional law in a way that conflicts with applicable decisions of this Court. Pet. at 22-31.

In their Brief in Opposition to Petition for Writ of Certiorari ("Op. Cert."), the respondent state officials,[1]

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[1] The respondent state officials are Loleta Didrickson, the Director of the Illinois Department of Employment Security ("IDES") and Stella Cuthbert, the Commissioner of IDES.

The United States Department of Labor and certain of its officials are parties to this case, too. See Pet. at iv-v. By letter of November 7, 1991, however, all the federal parties notified the Court that they did not intend to file any response to the petition unless directed to

(continued...)

do not contend that the questions we present are unimportant or are, for this reason, unworthy of this Court's attention. Nor do they contest the existence of the conflicts that we describe. And they do not even cite the several decisions of this Court that we discuss in urging that the ruling below decided a "federal question in a way that conflicts with the applicable decisions of this Court." Sup. Ct. R. 10.1(c).

Instead, the respondents argue that the court of appeals' decision was correctly decided. To make that argument, however, they ignore critical aspects of the statutory framework that governs the funding of the two unemployment insurance programs at issue, and mischaracterize both the nature of that funding and our argument.

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[1](...continued)
do so by the Court. Therefore, when we refer to "respondents" in this reply, we mean to designate the respondent state officials only.

1. Respondents repeatedly characterize the funds used to pay extended benefits ("EB") and federal supplemental compensation ("FSC") as "state moneys." Op. Cert. at 1, 3,7,9. They never define the term "state moneys," but their contention clearly is that if EB and FSC benefits are paid from "state" funds, that fact, of itself, establishes that the court of appeals' decision is correct.

We acknowledge that this Court's decisions establish that the Eleventh Amendment offers state officials immunity against suits seeking a judgment that would be paid from the state's general revenues. See Pet. at 32-34. We argue, however, that the Eleventh Amendment offers no immunity to state officials against suits seeking judgments payable from funds that are either segregated by law from a state's general revenues or drawn entirely from federal funds. Pet. at 22-27. And we argue further

that the EB and FSC benefits here fall into those special categories of "funds." Pet. at 8-13.

The label "state moneys" is simply no answer to this latter argument, which calls for examination of the source of the unemployment compensation benefits in question. But respondents do not seriously press any other answer to it.

As a threshold matter, respondents do not at all contest that the funds used both to pay for the unemployment insurance benefits at issue and for administrative expenses to operate the relevant programs are segregated by law from Illinois' general revenues.

Respecting the issue of whether the unemployment funds are "state" funds at all, respondents completely ignore the fact that the federal government advances or reimburses 100% of the state's expenditure for FSC. Sections 603(a) and 604 of the

Federal Supplemental Compensation Act of 1982, 26 U.S.C. § 3304 (1988), note Pub. L. 97-248 (as amended) ("FSC Act") (App. 336, 338). The federal treasury also pays for one-half of EB. Section 204 of the Federal-State Extended Unemployment Compensation Act of 1970, 26 U.S.C. § 3304 (1988), note Pub. L. 91-373 (as amended) ("EUCA") (App. 306). Thus, all of respondents' arguments respecting the issue of whether "state" funds are at issue concern the funding for the half of EB that, like regular unemployment insurance benefits, is paid from the unemployment trust fund and not reimbursed by the federal government.

Even as to those funds, however, respondents ignore the fact that the trust fund is financed by the Federal Unemployment Insurance Tax Act, ("FUTA"), 26 U.S.C. §§ 3301 - 3306 (App. 216 - 398). Respondents argue that unemployment insurance benefits "are paid from moneys assessed and collected

from Illinois liable employers." Op. Cert. at 3. But Illinois collects unemployment insurance contributions from its employers because otherwise those employers would be subject to pay more FUTA tax. See 26 U.S.C. §§ 3302, 3303 (App. 216, 249).

Respondents concede that the contributions paid by Illinois' employers "pass through the unemployment trust fund." Op. Cert. at 3 (emphasis deleted). But they refuse to acknowledge that FUTA obligates Illinois to turn the contributions it collects over to the federal government, 26 U.S.C. § 3304(a)(3) (App. 266-267); see 42 U.S.C. § 503(a)(4) (App. 402), and that IDES may then requisition money from the unemployment trust fund "solely for payment of unemployment compensation" or related expenses. 26 U.S.C. § 3304(a)(4) (App. 267); 42 U.S.C. § 503(a)(5) (App. 402-404); Ill. Rev. Stat. ch. 48, ¶ 660 (App. 494-506).

In sum, not even respondents' characterization of the funds here as "state" moneys -- whether they are "state" moneys segregated by law from the state's general revenues quite aside -- withstands the analysis that accompanies scrutiny of the governing federal and state statutes.

2. Our petition presents this Court with an opportunity to resolve two conflicts among the courts of appeal. Pet. at 22-27. One conflict is whether the Eleventh Amendment bars a judgment against state officials for payment of public benefits which are paid entirely from federal funds. Id. at 22-23. The second is whether the Eleventh Amendment bars a judgment against state officials for public benefits which are paid from funds segregated by law from the state's general revenues. Id. at 24-27.

Respondents can hardly deny the existence of the two conflicts. Nor can they plausibly urge that the conflicts are

unimportant. First, the conflicts implicate decisions in 11 of the 12 courts of appeal. Second, questions about the scope of the immunity that state public welfare officials enjoy under the Eleventh Amendment are recurring ones that this Court has frequently addressed. See e.g. Pennhurst State School and Hosp. v. Halderman, 465 U.S. 89 (1984), Edelman v. Jordan, 451 U.S. 651 (1974).

To rebuff our argument that the petition should be granted to resolve these circuit conflicts, respondents are reduced to the contention that the appellate rulings supporting petitioners' position are erroneous. See Op. Cert. at 8-10.[2] Sup. Ct. R. 10.1(a), however, suggests that, for this type of argument to carry the day, respondents must show that the these rulings are so clearly erroneous that the resulting conflicts are unworthy of resolution by this Court. Respondents do not even attempt to make that showing. Instead, they summarily dismiss those appellate decisions (from three circuits) that decline to extend the reach of the Eleventh Amendment to funds that are segregated by law from a state's general revenues as inconsistent with this Court's decisions in Kennecott Copper Corp. v. State Tax Comm'n, 327 U.S. 573 (1946) and Great Northern Life Ins. Co. v. Read, 322 U.S. 47 (1944). See Op. Cert. at 8-9. As we explained in our petition, however,

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[2] Respondents also contend that those rulings that decline to extend the reach of the Eleventh Amendment to judgments that would be paid entirely from "federal funds" are inapplicable here, since the judgment here, including any EB and FSC benefits owing, would be paid from "state funds." Op. Cert. Br. at 9. That argument, however, falls with its premise: as we (continued...)

[2](...continued) explained in our petition at 8-13 no benefits owed as the result of any judgment here would be paid from the state's general revenues, but instead from federal funds segregated from the state's general revenues.

Kennecott Copper Corp. and Read were taxpayer suits for the refund of tax payments that, unlike the unemployment compensation funds here, were, by law, not permanently segregated from the state's general revenues. Kennecott Copper Corp., 327 U.S. at 576 & n. 2; Read, 322 U.S. at 48-49. To the contrary, the funds in each of those cases were separated from the state's general revenues only until a final determination on the merits of the suits, and were paid into the state's general revenue fund if the imposition of the tax was upheld. Id. These cases are, therefore, wholly consistent with the appellate court rulings on which we rely -- and offer no support for those on which respondents rely.

Respondents also attempt to dismiss those appellate decisions (from four circuits) that uphold judgments against state welfare officials administering wholly federal funds as inconsistent with the "key

point" that, under this Court's decisions, the Eeventh Amendment bars "any judgment" against state officials. Op. Cert. at 9. But numerous decisions of this Court squarely contradict the notion that the Eleventh Amendment bars "any judgment" against state officials or even "any judgment" requiring the expenditure of state funds. See e.g. Pennsylvania v. Union Gas Co. 491 U.S. 1 (1989), Missouri v. Jenkins, 491 U.S. 274 (1989), Milliken v. Bradley, 433 U.S. 267 (1977). Respondents' contrary understanding, under which the simple identification of the named defendants from the caption of the case would virtually end the constitutional analysis, trivializes the "fundamental principle[s]" the Eleventh Amendment incorporates. Welch v. Texas Department of Highways and Public Transportation, 483 U.S. 468, 486 (1987).

3. In our petition, we also argued that the Seventh Circuit's ruling was in

conflict with several of this Court's Eleventh Amendment decisions. Pet. at 27-31 (citing cases). That contention at least obliges respondents to explain that there is no conflict, or that any conflict that does exist is unworthy of resolution by this Court. See Sup. Ct. R. 10.1(c). They do not do so.

4. The third question presented in our petition is whether "Hans v. Lousiana, 134 U.S. 1 (1890) and the reach of the Eleventh Amendment ... should be confined to suits in which states or state officials are alleged to have violated state law, thereby limiting the jurisdictional bar against such suits in federal court to state law claims but preserving a common law sovereign immunity defense for states and their officials against federal claims." Pet. at i-ii.

Respondents say that, in presenting this question, petitioners are thereby seeking to

have this Court "overrule Hans...." Op. Cert. at 10. In our petition, however, we expressly disclaimed any such intention, explaining that "Hans ... [was] correctly decided...." Pet. at 35, see id. at 37-46. To be sure, petitioners do seek to confine Hans and the Eleventh Amendment to suits in which states or their officials are alleged to have violated state law; and that course would require this Court to overrule cases, decided after Hans, that held that the Eleventh Amendment immunized state officials from money judgments based on federal law claims. But Hans itself, and that part of its progeny in which plaintiffs presented what are now properly understood to be state law claims, would remain intact. See Pet. at 47-48. While the third question that petitioners present is, therefore, one that does seek reexamination of many of this Court's decisions, the reexamination sought

is not nearly as extensive as respondents suggest.

Respondents otherwise say nothing that effectively counters petitioners' explanation of why this Court should grant review of their third question (as well as the first two). See Pet. at 37-51. They say, for example, that "it is not clear that only state law claims are included within the immunity afforded by the Eleventh Amendment" (Op. Cert. at 10, emphasis in original) -- as if petitioners grounded their plea for review of the third question on the contention that this Court's decisions left it unclear whether the Eleventh Amendment reached federal claims. As we emphasized in our petition, however, this Court's decisions leave no doubt that the Eleventh Amendment, as this Court has interpreted it, does extend to such claims, though Hans itself did not require that interpretation. Pet. at 33-34, 37-39. Petitioners' plea for

consideration of the third question is grounded on a request that this Court reexamine those decisions.

Respondents' answer to petitioners' argument that "substantial incoherence attends Eleventh Amendment jurisprudence," Pet. at 42 (citing and discussing cases), is no more persuasive. They simply assert, without explanation, that there is "no incoherence." Op. Cert. at 11. And their reliance on the notion that the "'principle enunciated in Hans has been ... stable....'" (Op. Cert. at 11, quoting Welch) is no answer to the reasons that petitioners offer for reexamining one of the principles for which Hans has -- wrongly -- come to stand. See Pet. at 37-51.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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